

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

\*\*\*\*\*

UNITED STATES OF AMERICA

v.

DAVID FALSO,

Criminal <sup>3</sup> 05-CR-270(TJM)

Defendants.

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**STIPULATED PRELIMINARY ORDER OF FORFEITURE**

THE UNITED STATES ATTORNEY, by and through Assistant U.S. Attorneys Miroslav Lovric and Carl J. Boykin, defendant, David Falso by and through his attorney, the Aswad and Ingraham Law Firm, Thomas Saitta, Esq., of counsel, hereby stipulate and agree to an Order of Forfeiture as follows:

WHEREAS, on June 16, 2005, a Federal Grand Jury sitting in the Northern District of New York returned Indictment No. 05-CR-270, charging defendant, David Falso, with violations of 18 U.S. C. §§ 2423, 2251 and 2252A and sought criminal forfeiture pursuant to 18 U.S.C. § 2253 of real and personal properties used or intended

to be used to commit or to promote the commissions of the child pornography offenses alleged in Counts 1 through 242 of Indictment No. 05-CR-270; and

**WHEREAS**, as a result of his guilty plea on the record on February 1, 2006 to Counts 1 through 242 of Indictment No. 05-CR-270, which alleged forfeiture pursuant to 18 U.S.C. § 2253, and the defendant's admission of the forfeiture allegations contained in Indictment No. 05-CR-270 during his plea of guilty on the record on February 1, 2006, the following properties are subject to forfeiture pursuant to 18 U.S.C. §§ 2423, 2251, 2252A and 2253 and that the government has established the requisite nexus between such properties and such offenses:

**1. REAL PROPERTY**

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 20 Peaceful Drive, Cortland, New York, as more particularly described in a Deed dated October 15, 1984 and recorded in the Cortland County Clerk's Office in Book 401 at Page 212, as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, with buildings and improvements thereon erected, situate, lying and being in the City of Cortland, County of Cortland and State of New York, bounded and described as follows: Beginning at a point in the center of Peaceful Drive which is 214 feet measured S 07° 50' W. of the intersection of the center line of Peaceful Drive and the center line of Oaklin Drive; running thence N. 82° 10' W. a distance of 125 feet to a point marked by a set pin; running thence S. 07° 50' W. a distance of 62 feet to a point marked by a set pin; running thence S. 82° 10' E. and passing through an existing pin in the west curb line of Peaceful Drive a distance of 125 feet to a point on the centerline of Peaceful Drive; running thence N. 07° 50' E. along the center line of Peaceful Drive a distance of 62 feet to the place of beginning.

That portion of the above described premises lying within the bounds of Peaceful Drive is conveyed subject to the rights of the public to use the same for street and highway purposes.

The foregoing description is made according to a survey made by J. Frederick Brady, L.S. 19665 on September 30, 1975.

This conveyance is made subject to all of the covenants, restrictions and provisions set forth in the deed of Walter C. Goff and Anna M. Goff to Donald L. and Yvonne G. Parker dated April 10, 1959.

Being the same premises conveyed by Deborah Lee Falso to David J. Falso by Deed dated the 15th day of October, 1984 and recorded in the Cortland County Clerk's Office on the 16th day of October, 1984 in Book 401 of Deeds at page 212.

**2. PERSONAL PROPERTY**

- a. A computer, no brand name, no serial numbers noted. Sticker on back notes "QC Passed" with a line through 2003 and 4. A silver mini tower, with trays labeled DVD-ROM and CD-Writer. Computer also has a 3.5 disk drive. Silver on/off button. Computer face is silver with black trim. There is a windows logo sticker on the upper right front of face that says "Designed for Microsoft Winodw XP";
- b. Four (4) DVD+Rs labeled #1, #2, #3 and #4 respectively;
- c. Video tape labeled "Mademoiselle Striptease";
- d. Tcon DVD labeled "Sideways".

**WHEREAS**, on or about July 17, 2005, the United States filed lis pendens against the above referenced real property; and

**STIPULATION**

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned and through their respective legal counsel, that as a result of defendant's guilty plea and his admission of the forfeiture allegations contained in Indictment No. 05-CR-270 on the record on February 1, 2006, the defendant, David Falso, individually and through his attorney Thomas Saitta, Esq., hereby agree and consent to the following:

1. the forfeiture of the personal property set forth above and its disposition in accordance with law;
2. an appraisal of the interior and exterior of the real property located at 20 Peaceful Drive Cortland, New York, to be contracted by the United States Marshal Service, which shall be performed to determine the fair market value of this real property, with a copy of said appraisal being provided to Thomas Saitta, Esq.;
3. that in lieu of forfeiting the real property located at 20 Peaceful

Drive, Cortland, New York to the United States for disposition in accordance with law, the defendant, or his authorized representative, will remit to the United States of America, on or before May 19, 2006, a certified check, bank check or money order, made payable to the United States Marshal Service, in the amount of \$62,000, the sum determined to be the fair market value of this property, based on the appraisal performed by Pioneer Appraisals, Inc. on February 27, 2006. This sum shall represent the substituted *res* for the real property located at 20 Peaceful Drive, Cortland, New York and shall be forfeited to the United States of America for disposition in accordance with law;

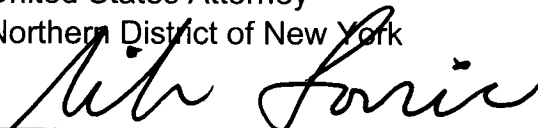
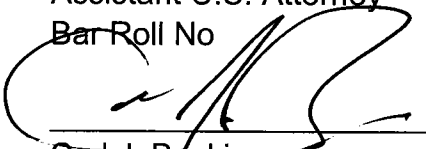

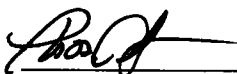
4. upon receipt of \$62,000, the United States shall release its *lis pendens* filed against the above real property;

5. the defendant, David Falso shall execute all documents tendered to him by the United States Attorney as may be necessary to effectuate the forfeitures,

6. each of the parties shall bear their own costs and attorneys fees;

7. the terms and conditions contained in this Stipulated Preliminary Order of Forfeiture represent the whole and complete agreement between the parties, and no other terms, conditions, previous agreements, or memoranda will be demanded, excepted, requested or performed by the parties and this Court; and

8. the Court shall retain jurisdiction in this case for the purpose of enforcing the terms of this agreement.

	UNITED STATES OF AMERICA Glenn T. Suddaby United States Attorney Northern District of New York
Dated: <u>3/27/06</u>	By: <u></u> Miroslav Lovric Assistant U.S. Attorney Bar Roll No
Dated: <u>3/23/06</u>	By: <u></u> Carl J. Boykin Assistant U.S. Attorney Bar Roll No. 512927
Dated: <u>3/8/06</u>	<u></u> David Falso, Defendant
	Aswad, Ingraham Law Firm
Dated: <u>3/8/06</u>	By: <u></u> Thomas R. Saitta, Attorney for David Falso Bar Roll No.

**THIS COURT** having before it the Stipulated Agreement of the parties to the above-referenced action, and the parties having agreed to its terms as indicated by their signatures, it is hereby

**ORDERED**, that the personal properties set forth above are forfeited to the United States of America for disposition in accordance with law; and it is further

**ORDERED**, that in lieu of forfeiting to the United States the real property located

at 20 Peaceful Drive, Cortland, New York, the defendant, or his authorized representative, will remit to the United States of America, on or before May 19, 2006, a certified check, bank check or money order, made payable to the United States Marshal Service, in the amount of \$62,000. This sum shall represent a substituted *res* for the real property located at 20 Peaceful Drive, Cortland, New York and shall be forfeited to the United States of America for disposition in accordance with law; and it is further

**ORDERED**, that upon the entry of this Order, the United States Marshal's Service is authorized to seize the above listed personal properties and the sum of \$62,000, which represents the substituted *res* for the real property located at 20 Peaceful Drive, Cortland, New York; and it is further

**ORDERED**, that the United States Attorney is authorized to conduct any discovery proper in identifying, locating or disposing of the properties subject to forfeiture in accordance with Fed. R. Crim. P. 32.2(b)(3) and 18 U.S.C. § 2253(l); and it is further

**ORDERED**, that upon entry of this Order, the United States is authorized to commence any applicable proceeding to comply with statutes governing third party rights, including giving notice of this Order; and it is further

**ORDERED**, that the United States shall publish notice of the Order and its intent to dispose of the properties set forth above in such a manner as the United States Attorney General or his representative may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject properties; and it is further

**ORDERED**, that any persons, other than the above-named defendant, asserting a legal interest in the subject properties may, within thirty days of the final publication of

notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject properties and for an amendment of the Order of Forfeiture, pursuant to 18 U.S.C. § 2253(m)(6); and it is further

**ORDERED**, that any petition filed by a third party asserting an interest in the subject properties shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject properties; the time and circumstances of the petitioner's acquisition of the right, title or interest in the subject properties; any additional facts supporting the petitioner's claim; and the relief sought; and it is further

**ORDERED**, that after the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues; and it is further

**ORDERED**, that the United States shall have clear title to the subject properties following the Court's disposition of all third-party interests or, if none, following the expiration of the period provided in 18 U.S.C. § 2253(m)(2), for the filing of third party petitions; and it is further

**ORDERED**, that pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendants at the time of sentencing, or before sentencing if the defendants consent, and shall be made part of the sentence and included in the judgment. If no third party files a timely claim, this Order shall become a Final Order of Forfeiture as provided by Fed. R. Crim. P. 32.2(c)(2); and it is further

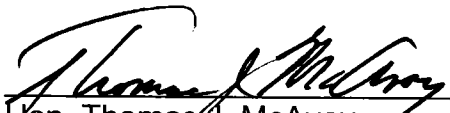
**ORDERED**, that each of the parties shall bear their own costs and any and all

attorneys fees; and it is further

**ORDERED**, that the terms and conditions contained in this Stipulated and Order of Forfeiture represent the whole and complete agreement between the parties, and no other terms, conditions, previous agreements, or memoranda will be demanded, excepted, requested or performed by the parties and this Court shall retain jurisdiction in this case for the purpose of enforcing the terms of this agreement; and it is further

**ORDERED**, that the Clerk of the Court shall forward six (6) certified copies of this Stipulated Preliminary Order of Forfeiture to Assistant United States Attorney Carl J. Boykin, United States Attorney's Office for the Northern District of New York, 100 South Clinton Street, Syracuse, New York 13261-7198

Dated: April 6, 2006.

  
Hon. Thomas J. McAvoy  
United States District Court Judge